

ST 04-0039-GIL 01/30/2004 EXEMPT ORGANIZATIONS

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable, receive an exemption identification "E" number. See 86 Ill. Adm. Code 130.2007. (This is a GIL.)

January 30, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 15, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC acts as a consultant to the XYZ. On February 5, 2003 you responded to a letter from our Treasurer of the Fire Protection District regarding the issue of sales tax being charged on prescription drug purchases. I want to thank you for the detailed nature of your response, and would also like to clarify a few of the points made in your letter. This clarification is not meant in anyway to dispute your conclusions, it is just a means to put your assessment in a different format to make sure that we understand the regulations and can then communicate this effectively to covered employees.

As governmental entities, the Fire Districts in Illinois are tax exempt (assuming they have the proper E number assigned by the IDOR). Employees acting as agents for the entity may make purchases for the agency in a tax exempt format, but not purchases for their personal use.

In the case of prescription drug purchases the issue becomes a little more complex in that these purchases are often partially considered an employee benefit, and as such not subject to sales tax. Unfortunately, it is not always clear when an employee is liable for the tax, and the pharmacist is responsible for collecting said tax. I have provided a few examples below to illustrate the issues and would ask if you can comment on

whether the tax is owed and if so how much. If you have explained why the tax is owed in your previous letter you can reference that document, or just provide a brief explanation of the application of the tax for each example.

Example 1: Drug Card Program where employee is responsible for \$10 Co-pay.

Employee turns in prescription for drugs with retail cost of \$50 and is responsible for co-pay of \$10.

Should the employee pay any tax? Yes ____ No _____. If Yes, how much, and why?

Employee turns in prescription for drugs with retail cost of \$9 and is responsible for entire amount because it is below the co-pay level.

Should the employee pay any tax? Yes ____ No _____. If Yes, how much, and why?

Example 2: Drug Card Program where employee is responsible for 20% of the drug cost.

Employee turns in prescription for drugs with retail cost of \$100 and is responsible for co-pay of \$20.

Should the employee pay any tax? Yes ____ No _____. If Yes, how much, and why?

Example 3: Mail Order Drug Card program using same set up as in example 1. Does the employee pay any taxes if the mail order comes from out of state? What are the liabilities and responsibilities of the plan sponsor and the employee?

From my own personal experience, I worked for Village governments for 15 years as Finance Director and do not recall anyone ever being charged a tax on the drug purchase, unless the purchase was under the minimum co-pay amount. Our employees always paid an even dollar amount equal to the co-pay with no 1% tax added for food and drug rates.

We would appreciate your further assistance in this matter.

As I mentioned in the previous letter, a sale of drugs to an employee who is part of a Drug Card Program operated by an exempt organization that holds an "E" number will be taxable. The sale will not be taxable to the exempt organization.

How much tax will be charged in any given situation will depend upon how the pharmacist, as a serviceman, is calculating his liability. Under the fourth method, it is the serviceman rather than the employee that will pay Use Tax on the drugs. However, it is my understanding that most pharmacists use the third method to calculate their liability. The third method is based upon the serviceman's cost price for the tangible personal property transferred. If, as in Example 1, the serviceman paid \$20 for the drugs, he will owe Service Occupation Tax based upon his \$20 cost price. In the context of a GIL, we cannot issue a more detailed response.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
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